

UPPER CLARK FORK STEERING COMMITTEE

MINUTES – December 7, 1999

MEMBERS PRESENT:

Gerald Mueller	<i>Facilitator</i>	Jim Dinsmore	<i>Granite C.D.</i>
Bob Benson	<i>C.F. Pend Oreille Coalition</i>	Ole Ueland	<i>Mile High C.D.</i>
Robin Bullock	<i>ARCO</i>	Holly Franz	<i>MT Power Co.</i>
John Vanisko	<i>Deer Lodge Valley C.D.</i>	Jules Waber	<i>Powell County</i>
Audrey Aspholm	<i>Anaconda/Deer Lodge County</i>	Eugene Manley	<i>F.C. & MWRA</i>
Gary Ingman	<i>MT DEQ</i>	Kathleen Williams	<i>FWP</i>
John Sesso	<i>Butte-Silver Bow</i>	Jim Quigley	<i>Little Blackfoot</i>

MEMBERS ABSENT:

Steve Schombel	<i>Trout Unlimited</i>	Martha McClain	<i>Missoula C.D.</i>
Liz Smith	<i>Deer Lodge</i>	Rep Doug Mood	<i>Seeley Lake</i>
Robert Orr	<i>Lewis & Clark C.D.</i>	Don Peters	<i>MT DFW&P</i>
Brent Mannix	<i>N. Powell C.D.</i>	Mike Griffith	<i>Lewis & Clark Co.</i>
Michael Kennedy	<i>Missoula County</i>	Suzy Peraino	<i>Rock Creek</i>

VISITORS PRESENT:

Dave Streufert	<i>Powell County Ext. Agent</i>
Steve Fry	<i>Avista</i>
Mike McLane	<i>DNRC</i>
Shannon Voss	<i>DNRC</i>
Roxann Lincoln	<i>DEQ</i>

The Upper Clark Fork River Basin Steering Committee met Tuesday, December 7, 1999, in St. Mary's Center, Deer Lodge, MT.

WELCOME:

Gerald Mueller welcomed Committee members and visitors and called the meeting to order. The agenda for the meeting was as follows:

1. Drought project update
2. State TMDL Program Update
3. Work plan
4. State-Avista Negotiation

The *Minutes* for the December 9, 1999 meeting were not discussed, as they were distributed late. They will be discussed and approved at the next meeting.

ANNOUNCEMENTS:

There were no announcements to begin the meeting.

DROUGHT PROJECT UPDATE:

Mike McLane summarized the report given by Dennis Workman concerning his update on generating a revised dewatered streams list. The Department of Fish, Wildlife and Parks originally classified dewatered streams in the Upper Clark Fork River as either periodically or chronically dewatered. All but one stream in the Clark Fork is chronically dewatered. Due to the limitation of these two categories, we haven't been able to further prioritize which chronically dewatered stream is more critical to address.

Dennis has generated a new classification list in which he categorized the degree of dewatering into 5 categories on a scale of one to five: Category 1 being the worst case of dewatering as it eliminates fish completely, and Category 5 being the most promising case in which "dewatering, if it occurs, is not a limiting factor to fish production." Dennis classified parts of the river according to various ranchers and fishery professionals familiar with different areas in the Clark Fork, and asked them to specify the number of years (out of five) that they consider them in that classification.

By examining these results and looking at fisheries potential, he was able to identify five reaches along the Clark Fork, as priorities for drought planning emphasis:

Reach 1: Clark Fork River—Perkins Lane to Westside Ditch

Reach 2: Clark Fork River—Westside ditch to Sager Lane. This is the most severely dewatered section on the entire upper Clark Fork River during dry years.

Reach 3: Clark Fork River—Sager Lane to mouth of the Little Blackfoot River.

Reach 4: Warm Springs Creek—mouth to Gardiner Ditch headgate.

Reach 5: Racetrack Creek—Interstate 90 to 0.5 miles above the Yellowstone Trail Road.

Dennis asked us to be cautious with this work. It is very subjective. The project is not "hard science," however it gives us a place to start.

Gerald emphasized that there is value in the work Dennis did. Now we can see where we agree or disagree. We have a tool we can use to fix the dewatering problem. Our next challenge is to get money from DNRC to hire Dennis again to focus on these five reaches (or different ones) and determine what voluntary options people are willing to pursue.

Kathleen Williams, FW&P, stated that the fisheries division would like to set aside time to compare their dewatered streams list with Dennis' version.

Gary Ingman stated that although he doesn't want to slow this process down, we may want to consider the other pieces of information (such as water quality and species of special concern) as we prioritize from Dennis' list.

Kathleen commented that it is a goal of the fisheries division to revise their chronically dewatered list to make it more useful. She suggested that we get a graduate student intern to merge Dennis' list with the 303d list and create a streamflow opportunity list (instead of a chronically dewatered list). It tells us one thing if we know how dewatered something is, but what do we gain if we do something there, and how much would it cost, or what would it take to gain that? These are the valuable pieces of information. Kathleen said she has a draft project description for a graduate student. She wants to know if the steering committee thinks this is a good idea, and encourages feedback.

Mike stated that Dennis wasn't primarily concerned with identifying the streams most severely dewatered, but appeared to identify the best opportunities to help fish and look at multiple benefits. There are small tributary streams that get severely dewatered on short reaches but the question is whether it has high value for reproduction of native species or species of special concern.

Ole Ueland asked if this study is to assess solely fishery (and not industry, agriculture, etc.).

Mike said it was basically directed toward fishery although by doing so, we can get conditions with adverse effects on other areas.

Ole also said that he questions the credibility of this report as it only takes opinions from people over a five-year period of observing the streams.

Mike emphasized that this kind of research is difficult to do, and this is only a starting point.

Gerald stated that any special concerns about this process should be directed towards Mike. He also wanted to summarize the committee's two main points;

1. To continue to work on data level and compare Dennis' list with the 303d list and with species of special concern.
2. Develop a proposal and receive money so Dennis can return to the field and compose a plan to get more water in the stream for each initial priority listing.

Gary asked if we could conduct a pilot project for a portion of the basin in which we inventory all stream dewatering problems, and then prioritize waterbodies within that list which have poor water quality, fisheries concerns, and special species concern. Then we could submit this as a package for the Natural Resource Damage Program as an overall plan for a portion of the basin to address stream flow dewatering issues that affect a lot of resources. This might give us more money to work with than what we may have addressing project by project.

Gerald said Gary's idea sounds like a good one. He emphasized the importance of addressing our goals and objectives before spending money. Gerald said that Gary's idea is a good way to combine steps.

STATE TMDL PROGRAM:

1. Revised 303d List for Upper Clark Fork River Basin

Gary Ingman and **Roxann Lincoln** updated us on the State TMDL Program. First they explained the revision of the 303d list. In 1997, changes to the Montana Water Quality Act required DEQ to perform a comprehensive review of the impaired waters list. This was to be completed by October 1999. There was concern that the previous list may not have been based on solid science. As a condition of the 1997 legislation, DEQ had to tighten up there criteria to place a stream on the 303d list.

Statewide, they have reviewed about 94% of the information on impaired streams. 119 impaired stream segments or lakes in the Upper Clark Fork Basin appeared on the 1998 impaired water list, and following the review, only 56 of these streams will remain on the list. 46 streams are coming off the list due to a lack of sufficient data, and must be reassessed. 15 of these streams meet water quality standards by supporting all their uses and will come off the list. They will have a fewer number of streams to focus on, and will initiate a public review process (about 17 meetings) to get public feedback.

Gary handed out an overall summary of the types of problems we are seeing within the 56 streams that will stay on the list. He organized the streams according to the water use affected, the suspected causes and sources of that impact, and the total stream mileage affected. He noted that habitat alteration affects the greatest number of stream miles. This is followed by metals, sediment/siltation, stream dewatering, nutrients, riparian habitat degradation, thermal modifications (that may relate indirectly to dewatering, and finally suspended solids.)

The source of what may be contributing to these documented problems, is in most cases, our best guess. Certainly, when we go out to develop TMDLs we will gather more detailed information to identify them.

He explained that in the tables to follow, any stream that has a mark under the column as "insufficient credible data" or "fully supporting" will come off the 303d list. For each of the categories that a stream may fall into, they have indicated ONLY that use which is the MOST IMPACTED (whether the use is of insufficient data, fully supporting, partially supporting, not supporting, or threatened).

John Sesso argued that we don't want to see a use that is strictly the most impacted (in most cases, the fisheries is the most impacted, either as supporting or of varying degrees not supporting). John said he wants to know

that if a stream is fully supporting, what exactly (besides fishery) the stream is supporting. Don't just emphasize aquatic life because this won't mean much to the average public. They want to know how it affects them.

Roxann explained that by stating that aquatic life is supported, we are stating that it supports all other uses, and vice versa.

John Sesso stated that by not indicating what has been supported is a negative indication. People want the whole picture.

Roxann said they are planning a February 17 public meeting in Deer Lodge from 7:00 to 9:00. They will be present for detailed questions and concerns beforehand, from 4:00 to 6:00.

Gerald mentioned that they could co-host this meeting with the steering committee. He also mentioned that DEQ could practice their presentation on the steering committee first, as a "dry-run" to generate feedback before their public meeting.

2. Federal Court Ruling on State TMDL Program

Gary mentioned that in February 1997, five conservation and environmental groups filed suit against EPA regarding Montana's progress in restoring the health of impaired streams through TMDL or other efforts. They complained that EPA was wrong in approving our impaired waters list, and approving completed TMDLs, and argued EPA should've stepped in because Montana didn't make good progress.

On November 5, the court ruled on behalf of EPA on three of the four counts:

1. EPA was correct in approving the 303d impaired waters list.
2. EPA was correct in approving TMDLs the State has completed.
3. EPA had no mandatory duty to take over the State's responsibility.
4. Despite all the above, EPA hasn't made good enough progress over the years.

EPA has asked for reconsideration of the order based on the fact that there is no Clean Water Act regulation that requires EPA's review and approval of an adequate number of TMDLs. The plaintiffs are asking the courts to order EPA to take over the state's responsibility regarding TMDL. They would like TMDLs to be completed by the year 2007, believe they should be completed on a watershed basis, and that EPA should be required to complete development on 15% of the list each year. They would also like EPA to be required to submit semi-annual reports, etc.

3. Proposed TMDL Rules

EPA has thus proposed controversial regulatory changes which would revise the impaired list and submission process. They have proposed:

1. Better methods. The State will have specific methods outlined for how they make their decisions, and they will go public and rely on public feedback to help establish these methods. They will also be required to submit these methods eight months in advance before they publish the final list. EPA must approve this list.
2. Breaking the existing 303d list into four categories.
 - a.) Impaired by pollutants,
 - b.) Pollution-impaired
 - c.) TMDL approved but not restored, and
 - d.) Impaired water bodies that will be addressed by approaches other than TMDLs.

Then require TMDLs for waterbodies that are impaired or threatened by one or more “pollutants” or by an unknown cause. TMDLs will not be required for water bodies impaired due to “pollution.”

Gerald commented that many of the streams on the current list relate to pollution (not pollutants) and would not require TMDLs under the new rule.

3. Set schedules and priorities. Prioritize waterbodies according to severity of pollution, its uses, and any endangered or threatened species. Set schedules for establishing TMDLs for each individual waterbody, and monitor waterbodies on the list until water quality standards have been restored.

Gary noted that a lot of what is proposed by EPA is very controversial. Some of this the State is already doing (such as following a schedule and encouraging public participation). Right now, DEQ has an interdisciplinary team within the department that is reviewing these rules and analyzing what the implications are to our program from an environmental standpoint and from a resource standpoint, and we (along with other agencies) are submitting formal comments under the Governor’s signature. At the same time, we’re coordinating with groups like the Western Governors Association and Western States Water Council to try and come up with some unified conditions of all western states and then we’ll submit comments. DEQ feels strongly that we already have a good program with the State, and we’re going to continue with our current program, and that is our best defense.

We’re concerned that the proposal is going to reduce the State’s flexibility, increase the rigor of how we have to do this, cost more money, slow our overall progress in addressing water quality problems, and narrow the focus to a subset of what we’re trying to fix.

WORK PLAN:

Gerald stressed the importance of addressing the steering committee's goals and deciding what we should focus on in the future. He said the steering committee has a dual purpose:

1. Strive for the local people.
2. Strive for balance.

Gerald also reminded the committee of its statutes:

1. Must review Upper Clark Fork River Basin water right closure and exception (we've done this).
2. Report to legislature evaluating instream flow pilot programs (we have ten years to do this).
3. Report on relationship and between surface water and groundwater use (Mike has been leading this effort in trying to accomplish this).
4. Provide forums to communicate about issues (continue to do this regularly).
5. Provide education about water law and issues (we're currently doing this with State/Avista forums).
6. Identify water management issues, both short and long terms (we occasionally do this).
7. Identify a funding mechanism for water storage sites (we really haven't done this).
8. Assist in facilitating resolution of water-related disputes (occasionally this has happened by coordinating with other planning efforts)
9. Advising government agencies about water management and permitting activities (just did that with the EPA TMDL rules).
10. Consult local governments.
11. Report periodically to legislature.

Gerald said that what we have been doing focuses on three things:

1. Voluntary water quality pilots.
2. Groundwater study.
3. Drought planning.

Possible future Activities:

1. Voluntary Water Quality Management Planning
 - A. New 303d list
 - B. Complete Fred Burr and Race Track Pilots
2. Drought Planning—Phase II
3. Flint Creek Return Flow Computer Model
4. Changing Irrigation Practices
5. Impacts of Subdivision Development on Ground Water
6. Natural Resource Damage Remediation Planning
7. Water Rights Adjudication Implementation

Jim suggested that we maintain what we are working on with old projects—don't start new ones.

Audrey stressed the importance of small projects as well as the larger ones.

Gary said that a lot of the activities on the list fit together. We need to look at how far we've come and what has changed. We need to establish new working relationships, acquire more money, and realize we have a lot of opportunity.

Gerald said he will write up an actual work plan for the committee to approve. He mentioned that this committee has been the focus of many case studies. Many people are interested in what we have been doing.

Ole asked the committee to think about how economics fit into our work plan? When we plan, what are we planning for?

NEXT MEETING:

The next meeting will be held at St. Mary's Center in Deer Lodge, on January 27, 2000, at 9:30 a.m. It will hopefully serve as a "dry-run" for DEQ's future presentation of the State's TMDL program at a public forum.